

EXECUTED IN 7 COUNTERPARTS

No. 2

RECORDATION NO. 5722-C Filed & Recorded

MAY 17 1971 12:42 PM

INTERSTATE COMMERCE COMMISSION

SUPPLEMENT

Dated as of May 10, 1971

TO

CONDITIONAL SALE AGREEMENT

Dated as of March 15, 1970

BETWEEN

CUSTOM SERVICES CORP.

and

SOUTHERN RAILWAY COMPANY

and

AGREEMENT AND ASSIGNMENT

Dated as of March 15, 1970

BETWEEN

CUSTOM SERVICES CORP.

and

MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Agent

THIS SUPPLEMENTAL AGREEMENT, dated as of May 10, 1971, between SOUTHERN RAILWAY COMPANY (the "Railroad"), CUSTOM SERVICES CORP. (the "Builder") and MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Agent (the "Assignee"):

WHEREAS, the Builder and the Railroad entered into a Conditional Sale Agreement dated as of March 15, 1970 as amended (the "Conditional Sale Agreement"), pursuant to which the Builder agreed to sell and deliver to the Railroad and the Railroad agreed to purchase the railroad equipment (the "Equipment") described in Schedule B to the Conditional Sale Agreement; and

WHEREAS, the Builder thereafter assigned certain of its right under the Conditional Sale Agreement and its right, title and interest to the Equipment to the Assignee pursuant to an Agreement and Assignment as amended dated as of March 15, 1970 (the "Assignment"), between the Builder and the Assignee; and

WHEREAS, the Conditional Sale Agreement provides in Article 3 that the Deferred Purchase Price, as that term is defined therein, of the Equipment shall be payable in 10 equal annual instalments beginning March 15, 1971, with the unpaid balance of the annual instalments to bear interest at the rate of 8% per annum; and

WHEREAS, the Railroad wishes to amend Article 3 to change the provisions for the repayment of the Deferred Purchase Price and to change the interest rate to accommodate a plan of refinancing and the Builder and the Assignee are agreeable to such changes, with the change in the interest rate to be effective as of the effective date of such refinancing (the "Effective Date"), estimated to be May 18, 1971:

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. Article 3 of the Conditional Sale Agreement is amended by deleting the third and fourth paragraphs thereof and substituting therefor the following:

The Railroad hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment as follows:

(a) With respect to each unit of Equipment, the amount of the Purchase Price set forth under "Deferred Purchase Price Per Unit" in Schedule B (hereinafter called the "Deferred Purchase Price" when used with respect to any unit of Equipment but when used with respect to all units of Equipment such term is to include in addition the amount of \$1,640), in instalments as hereinafter provided;

(b) The amount by which the Base Price or the Purchase Price, whichever is less, exceeds the Deferred Purchase Price on the Closing Date (as hereinafter defined) with respect to each unit of Equipment included in each Group; and

(c) On the earlier of the Cut-Off Date or the final Closing Date, the balance, if any, of the aggregate Purchase Price of the Equipment over the amount paid for the Equipment pursuant to subparagraphs (a) and (b) above.

One-tenth of the Deferred Purchase Price with respect to all units of Equipment reduced by \$1,640 shall

be payable on March 15, 1971 and the balance of such Deferred Purchase Price shall be payable in seven equal instalments (except for appropriate adjustment of the final instalment, if necessary), payable on April 1, 1972, and on each April 1 thereafter to and including April 1, 1978, subject to adjustment as a result of prepayments of instalments resulting from Casualty Occurrences and determinations that units of Equipment are otherwise unsuitable for the use for which purchased, as provided in Article 8 hereof ; provided, however, if settlement for all units of Equipment shall not have been made on or before March 15, 1971, the instalment payable on March 15, 1971 shall be an amount equal to 1/10 of the Deferred Purchase Price with respect to the Equipment for which settlement has theretofore been made, (i) if settlement for all units of Equipment shall not have been made on or before August 1, 1971, the seven remaining instalments shall be reduced pro rata by \$1,640 and by an amount (the "Reduction Amount") equal to the Deferred Purchase Price per unit multiplied by the number of units for which settlement shall not have been made and (iii) if settlement for all units of Equipment shall have been made on or before August 1, 1971, on the final Closing Date hereunder the seven remaining instalments shall be reduced pro rata by \$1,640. The unpaid balance of the Deferred Purchase Price for each unit of Equipment shall bear interest from the several Closing Dates at the rate of 8% per annum, such interest to be payable to the extent accrued, on September 15, 1970, March 15, 1971 and on the Effective Date. From and after the Effective Date the unpaid balance of the Deferred Purchase Price for all units of Equipment shall bear interest

at the rate of 7 1/2% per annum, such interest to be payable, to the extent accrued, on April 1 and October 1 of each year commencing October 1, 1971, and to continue to and including April 1, 1978, provided, however, that on the earlier of the Closing Date last occurring hereunder or August 1, 1971 the Railroad will pay to the Vendor interest at the rate of 7 1/2% per annum from the Effective Date on the Reduction Amount, if any, plus \$1,640, and thereafter the Railroad shall only be obligated to pay interest on the Deferred Purchase Price for all units of Equipment less the Reduction Amount, if any, and less \$1,640.

2. The term "8 1/4%" as it appears in the second paragraph of Article 4 and in the first and second paragraphs of Article 18 of the Conditional Sale Agreement is hereby amended to read "7 3/4%".

3. All references in the Assignment to the Conditional Sale Agreement are amended to refer to the Conditional Sale Agreement as amended and supplemented hereby.

4. Except as amended and supplemented by this Supplemental Agreement, the Conditional Sale Agreement and the Assignment shall remain unaltered and in full force and effect.

5. This Supplemental Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

IN WITNESS WHEREOF, the parties hereto, each

pursuant to due corporate authority, have caused this Supplemental Agreement to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

SOUTHERN RAILWAY COMPANY,
By

ATTEST:

Carl K. A. Sturber
Vice President

Malcolm D. Edwards
Assistant Secretary

CUSTOM SERVICES CORP.
By

ATTEST:

W. A. Brown
President

W. A. Brown
Secretary

MORGAN GUARANTY TRUST COMPANY
OF NEW YORK, as Agent
By

ATTEST:

R. E. Sparrow
Trust Officer

Malcolm D. Edwards
Assistant Secretary

R. E. Sparrow

RECORDED

DISTRICT OF COLUMBIA

On this 17th day of May, 1971, before me personally appeared K. A. Stoecker, to me personally known, who, being by me duly sworn, says that he is a Vice President of SOUTHERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Lawrence A. Huff
Lawrence A. Huff
Notary Public

in and for the District of Columbia

My commission expires June 30, 1972.

STATE OF FLORIDA)
:
COUNTY OF DUVAL)

On this day of May, 1971, before me personally appeared , to me personally know, who, being duly sworn, says that he is the President of Custom Services Corp. that one of the seals affixed to the foregoing instrument was signed and sealed on behalf of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public, State of Florida at Large
My Commission Expires Mar. 6, 1975
Bonded by American Fidelity & Guaranty Co.

Michael B. Bass
Notary Public

My commission expires

STATE OF NEW YORK)
:
COUNTY OF NEW YORK)

On this 14th day of May, 1971, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Trust Officer of MORGAN GUARANTY TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

LORRAINE FOWLER
Notary Public, State of New York
No. 24-6368100
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1972

Lorraine Fowler
Notary Public

My commission expires